IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945.

No. 510

PAUL KNAUER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

BRIEF OF PAUL KNAUER, PETITIONER.

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BRIEF OF PAUL KNAUER, PETITIONER.

This proceeding involves the validity of the certificate of naturalization granted to Paul Knauer by the Circuit Court of Milwaukee County, Wisconsin, on April 13, 1937, which, on complaint of the District Attorney filed on February 13, 1943, in the District Court for the Eastern District of Wisconsin, sitting at Milwaukee, was revoked and cancelled for alleged fraud in the proceedings wherein it was granted.

The Circuit Court of Appeals, on appeal by petitioner, affirmed the judgment of the District Court.

At this term on December 10, 1945, this Court granted certiorari to the Seventh Circuit Court of Appeals to bring up the record of said denaturalization proceeding for further review.

The Opinions Below.

The Opinion of the Circuit Court of Appeals is found in the printed transcript of the record at pages 83 to 96 and is reported as *United States* v. *Knauer,* 149 F. (2d) 519.

In the District Court fourteen similar cases were consolidated for trial and Honorable F. Ryan Duffy, trial judge, in passing upon the mass trial evidence, filed a written "memorandum opinion with findings of fact and conclusions of law on common issues consolidated for trial", which appears at pages 19 to 28 of the printed transcript of record.

Also Judge Duffy filed an "Opinion, findings of fact, and conclusions of law" at the end of the trial of petitioner which is found at pages 28 to 43 of the printed transcript.

Grounds of Jurisdiction.

The judgment of the Circuit Court of Appeals became final on June 28, 1945, when petition for rehearing was denied (Tr. 97), and Mr. Justice Rutledge entered an order on September 22, 1945, extending the time for filing the petition for certiorari herein to October 15, 1945. The petition for certiorari was filed within that time and certiorari was granted on December 10, 1945.

The jurisdiction of this Court is invoked under Section 237B of the Judicial Code as Amended, 43 Stat. 927, 28 U. S. C. A., Sec. 344 (b).

In maintaining inviolable the great privilege of American citizenship this Court has declared itself not bound by the findings of provincial courts and has reserved to itself the task of itself examining the findings in denaturalization cases (*Baumgartner* v. *U. S.*, 322 U. S. 665, 670-671).

STATEMENT OF THE CASE.

Petitioner Naturalized in 1937.

Paul Knauer was born at Saulfield, German, March 3, 1895, came to the United States in April, 1925, filed a declaration of intention of becoming a citizen of the United States on December 4, 1929, and on November 20, 1936, filed his petition for naturalization in the Circuit Court of Milwaukee County, Wisconsin, a court of unlimited jurisdiction.

On April 13, 1937, Knauer's application for citizenship was heard by said State Court and said Court found that Knauer was entitled to admission to citizenship, and accordingly the required oath of allegiance was administered to and taken by him; that thereupon the Court entered its judgment admitting Knauer to citizenship, and pursuant to such judgment, the Clerk of said State Court issued to him a certificate of naturalization.

Complaint to Denaturalize Filed February 3, 1943.

On February 3, 1943, the District Attorney of the United States for the Eastern District of Wisconsin filed in the District Court of the United States for the said District at Milwaukee, Wisconsin, a complaint charging that Knauer had fraudulently obtained said decree and Cer-

tificate of Naturalization from said Wisconsin State Court and therein represented to the Court that in his said petition for naturalization Knauer had represented and set forth under oath as required by law among other things as follows:

> "I am attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to the German Reich, of whom (which) at this time I am subject (or citizen), and it is my intention to reside permanently in the United States."

That thereafter on, to wit, the 13th day of April, 1937, Knauer took the following oath of allegiance in open court as required by law:

> "I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to the German Reich of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion; So help me God. In acknowledgment whereof I have hereunto affixed my signature."

That on the same date, the 13th day of April, 1937, the said Circuit Court of Milwaukee County, Milwaukee, Wisconsin, relying on the truth and good faith of the representations made by Knauer in his petition for naturalization and in his oath of allegiance, entered its order admitting him to citizenship in the United States and thereupon certificate of naturalization Number 4,188,490 was issued to him by the Clerk of said Court.

That all of the representations aforesaid made by Knauer in his petition for naturalization were false and fraudulent in that he was not in fact attached to the principles of the Constitution of the United States at the time of the filing thereof nor during the five years prior thereto; in that he did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to the German Reich of which he was then a subject, but in fact intended to retain allegiance and fidelity to the said the German Reich; and in that he did not in fact intend to reside permanently in the United States.

That all of the said representations made by Knauer in his oath of allegiance were likewise false and fraudulent in that he did not in fact renounce and abjure all allegiance and fidelity to the said the German Reich; in that he did not in fact intend to support the Constitution and laws of the United States of America against all enemies, foreign and domestic; and, in that he did not, in fact, intend to bear true faith and allegiance to the same, but in fact did intend to remain a subject of the German Reich and to maintain his allegiance thereto.

That the said certificate of naturalization was procured by Knauer (amended on hearing to read "fraudulently and therefore illegally"), fraudulently and illegally, and for the purpose of obtaining the rights, privileges and protection of American citizenship without intending to assume the duties thereof, and that said certificate of naturalization is subject to cancellation.

The petition of the District Attorney prayed that an order be entered revoking and setting aside the order of admission of Knauer to citizenship, cancelling the said certificate of naturalization, directing surrender up thereof for cancellation, and that Knauer be forever restrained and enjoined from claiming any rights, privileges, bene-

fits or advantages whatsoever under said order of admission to citizenship and said certificate of naturalization; that a certified copy of such order be mailed to the Commissioner of Immigration and Naturalization of the Department of Justice and to the Clerk of the Circuit Court of Milwaukee County, Milwaukee, Wisconsin.

The said complaint was not under oath.

Knauer appeared *pro se* in said proceeding and conducted his own defense in the District Court.

Answer of Petitioner.

Knauer answered said complaint and admitted that he made the said quoted representation of attachment, renunciation and intentions and made the above quoted oath; that he was admitted to citizenship by said State Court, and was granted said certificate of naturalization by the court which was issued by the clerk of said court.

Further answering the said charges, Knauer denied (Tr. 4) all charges therein made against him, claiming that his purposes were high; that he had been examined by governmental agencies as to his knowledge and belief in the American form of government; that he called two competent witnesses to verify his character, his qualifications for citizenship and his beliefs; all of which were found to be above reproach and in full accord with his statements and declarations made in his said Petition; that with a clear conscience, and, without any mental reservation or purpose of evasion whatsoever, he swore to renounce and abjure all allegiance and fidelity to the German Reich of which he had theretofore been a citizen and likewise to support and defend his newly adopted homeland and to uphold, support and defend its Constitu-

tion and laws against all enemies, foreign and domestic; that he did not commit any illegal act to obtain his naturalization papers, and that he did not acquire his Certificate of Naturalization fraudulently and falsely; that he definitely intended to bear true allegiance to the United States and did not intend to remain a citizen of the German Reich (Tr. 4-10).

Knauer further alleged in his said Answer that the said proceeding to denaturalize him was in violation of the 14th Amendment to the Constitution, which provides that all persons of the United States, born or naturalized therein, are entitled to equal privileges and immunities; that the Nationality Act of 1940 should be held to be a criminal statute and a jury trial allowed and, unless so construed, would violate the 6th Amendment of the Constitution; and violates the 8th Amendment to the Constitution, and is an *ex post facto* law violating Article 1, Section 9, Paragraph 3 of the Constitution and that it violates the due process clause of the 5th Amendment to the Constitution (Tr. 7-8).

The United States did not reply to said Answer.

Cases Consolidated for Mass Trial.

About the time of the filing of this case, the District Attorney for said District filed a large number of similar cases and on May 12, 1943, a motion was made to consolidate this case with thirteen other similar cases with the avowed purpose of determining in one trial an issue of fact claimed to be common to all fourteen cases, and thereafter to try the remaining issues in each case separately and in *seriatim* (Tr. 11). The motion, supported by affidavit of the Assistant District Attorney (Tr. 12) was resisted by Knauer (Tr. 15), his objection overruled,

and an order entered (Tr. 16) consolidating said fourteen cases for the purpose of receiving evidence

> "concerning the organization, aims, purposes, and activities of the German-American Bund, its National and local subdivisions, its predecessors and affiliates, including the Grafton Settlement League, Inc., subject to the usual right of cross examination and objection by each defendant."

about which matters nothing had been said in said complaint.

It was further ordered that each defendant might introduce evidence as to such issues, and that each defendant in his subsequent trial might introduce pertinent evidence as to his individual case, and that after conclusion of the trial of the consolidated issues, the trial of each individual defendant should continue separately (Tr. 18).

A pretrial conference settled the method of introduction of various exhibits, documents, newspaper articles, translations, etc. (Tr. 18).

The evidence taken in the mass hearing in typewritten question and answer form, some 1400 typewritten pages, is in the record but was never abstracted or printed; exhibits received in evidence in great numbers, and in large bulk, are in the record but have never been described in a printed record. Also the testimony taken in the subsequent and separate trial of your petitioner is in the record, in typewritten question and answer form, some 1000 pages, never having been abstracted or printed.

By order of this Court the printing of said portion of the record was excused and parties have been given leave to refer to said typewritten portion of the record and exhibits in their briefs.

The record proper, omitting evidence and exhibits, is in printed form, and filed herein.

The Mass Trial.

The mass trial was commenced on September 21, 1943, consuming approximately eight court days; some thirty-odd witnesses were examined; 1433 pages of typewritten testimony taken; 100-odd exhibits were introduced, including books, editorials, news articles, speeches, pamphlets, hearsay, broadcasts, deductions and suspicions.

The Individual Trial of Petitioner.

At the conclusion of the mass trial, the individual trial of your petitioner was commenced on November 22, 1943 and consumed six and one-half days, when it was adjourned on December 1, 1943, and was resumed on January 6, 1944, and another day was consumed. 1046 pages of testimony were taken and some 200-odd exhibits were introduced.

The Findings of the Mass Trial.

On May 25, 1944, the trial Judge of the District Court filed certain findings pertaining to the evidence produced in the mass trial as to ten of the defendants, including your petitioner (four having been dismissed), and all of whom, except Knauer, were subsequently found innocent of the charges.

The findings, consisting of 26 paragraphs, 1 to 26 (Tr. 18-28), state that each petition contained identical allegations as to their several intentions not to become *bona fide* citizens, in that, the mental attitude of each was opposed to the statements he made in his application and in his oath.

The Court found that the issues tried *en masse* were common to all of the cases and that the principal common issue concerned the organization, aims, purposes and activities of the German American Bund, its national and local subdivisions, its predecessors and affiliates, including the Grafton Settlement League, Inc. (Tr. 20).

The Court then holds:

> "The evidence clearly, unequivocably and convincingly, establishes that the German American Bund and its predecessor organizations were Un-American and subversive, and that the teachings were contrary to the principles of the Constitution of the United States" (Tr. 20).

The Court then concludes:

> "2. The fact that a person was a member of a local unit of the Bund is not in itself sufficient to prove fraud which would warrant cancellation of a decree of naturalization" (Tr. 27).

Findings Made After Knauer's Trial.

On June 16, 1944, the Court filed a memorandum opinion with its findings in Knauer's case in which the Court said that the burden was on the plaintiff "to establish its contentions affirmatively by evidence clear, convincing and unequivocal,—to all practical intents and purposes beyond a reasonable doubt" (Tr. 30).

The trial judge further stated that most of the statements of the defendants in the consolidated cases, relied upon by the Government to show mental attitude at the time their oaths were taken, "were made before our Nation was attacked" (Tr. 30).

The trial judge did not, however, separate his findings so as to show what was done and said *before naturaliza-*

tion, and what was said and done *after the oath* of allegiance.

The "findings" of the trial judge are predominately conclusions, inferences, deductions, presumptions, inferences upon inferences.

The ultimate conclusions of the trial judge, based upon other conclusions, are that, after Knauer was admitted to citizenship in 1937, through 1941 (Pearl Harbor), his attitude toward fidelity and allegiance and attachment to the principles of the Constitution were the same as prior to the date of naturalization (Finding No. 59, Tr. 41); and that, from the conduct of Knauer through the years *before and after* his naturalization as well as the evidence *in its entirety* the Court concludes that when Knauer filed his application for citizenship, at the time of his naturalization, and at all times thereafter, he did not in good faith intend to renounce allegiance and fidelity to the German Reich, and did not in fact do so (Finding 60, Tr. 42), and the Court finds from Knauer's beliefs, so found, in and to National socialism and activities in promoting it, opposition to political and racial equality, that during said time he was not in fact attached to the principles of the Constitution and did not intend to support it (Tr. 48, Finding 61). The findings are based largely upon acts and expressions of petitioner after the date of his naturalization.

The Conclusions of Law.

The conclusions of law predicated upon the Court's findings were that the order of the Circuit Court of Milwaukee County, Wisconsin, admitting Knauer to citizenship and its Certificate of Naturalization "were fraudulently and therefore illegally procured and should be revoked, set aside and cancelled" (Tr. 43).

Court's Comments on Baumgartner Case.

The trial judge then comments that his findings and conclusions were made after he had an opportunity to examine the decision of this Court in *Baumgartner* v. *U. S.*, 322 U. S. 665, decided June 12, 1944, four days prior to the filing of his opinion and findings in Knauer's case. He then distinguishes the two cases by the statement: "Here there was evidence showing the attitude of the defendant prior to the date that he took his oath on April 13, 1937, which made him a citizen" (Tr. 43), and that the Court was convinced beyond reasonable doubt that Knauer's practiced fraud "when he obtained his Certificate of Naturalization". However, the trial judge does not say that he was convinced beyond doubt, by the evidence of what happened prior to petitioner's oath, but he relied upon the evidence in its entirety, and that he was convinced beyond douht by all the evidence (Tr. 42).

The Decree of Cancellation.

A decree was entered July 7, 1944, by which it was adjudged that the order of the Circuit Court of Milwaukee County, Wisconsin, made April 13, 1939, admitting Knauer to citizenship be revoked, set aside and cancelled, the Certificate of Naturalization issued thereon be delivered up for cancellation, and cancelled, and that Knauer desist and refrain from exercising any rights, privileges or benefits under said order and certificate (Tr. 44).

The Trial Court Did Not Follow the Schneiderman and Baumgartner Cases.

In discussing, at the pre-trial conference, the procedure to be followed at the trial, and again at the opening of the mass trial, the trial judge remarked:

"I should repeat here what I said at the pretrial conference, that it will be my *endeavor* in this case to apply the rules as laid down by the Supreme Court *and as interpreted by our Circuit Court of Appeals of the Seventh Circuit.* It may well be that their (Circuit Court of Appeals) interpretation *does not entirely coincide with some other Circuit Courts of Appeals, but I feel bound to follow as nearly as I can their opinion in this matter, their ideas, their interpretation*" (Mass trial record, p. 18).

As hereafter shown, the holding of the Circuit Court of Appeals of the Seventh Circuit in the *Krause* case, 136 F. (2d) 935, to which the trial judge referred and which he said he must follow, is out of harmony with the interpretations of other Circuit Courts of Appeal, and the decisions of this Court.

The Appeal.

Appeal from said decree was perfected, bond given, and the judgment was stayed pending appeal (Tr. 65).

The Circuit Court of Appeals has also stayed its mandate pending this appeal (Tr. 97).

The Opinion of the Circuit Court of Appeals.

The opinion of the Circuit Court of Appeals rendered in this cause is reported as *United States* v. *Knauer*, 149 F. (2d) 519.

The Circuit Court of Appeals affirmed the decree of the District Court. It did not attempt to harmonize its own opinion with either *Schneiderman* v. *U. S.*, 320 U. S. 118, or *Baumgartner* v. *U. S.*, 322 U. S. 665. Of the *Baumgartner* case it remarks that there is no resemblance to this case—and the *Schneiderman* case is given the silent treatment,—not being mentioned.

However, it is to be noted that the Seventh Circuit Court said in another and earlier case, *U. S.* v. *Krause*, 136 F. (2d) 935, above mentioned, that this Court did not, by its holdings in the *Schneiderman* case, intend to overrule the long line of cases in which subsequent conduct and expressions had been relied upon as a basis for cancellation. The *Krause* case was one of the cases relied upon by the District Court in deciding this case. Other cases of the same type are cited in the opinion of the trial judge (Tr. 29).

Other Circuit Courts of Appeal have followed the rule of evidence promulgated in the *Schneiderman* case and approved in the *Baumgartner* case and the decisions of the Seventh Circuit Court of Appeals in this case and the *Krause* cases are out of harmony with the rulings of other Circuit Courts of Appeal and those of this Court.

Specification of Errors.

The District Court erred in decreeing the revocation and cancellation of Knauer's certificate of citizenship, upon evidence which was incompetent, inconclusive, and without weight.

The District Court erred in taking jurisdiction upon the general allegations contained in the complaint alleging only intrinsic fraud in the form of conclusions, and in decreeing thereon.

The District Court erred in predicating its decree upon acts and expressions of Knauer after he was admitted to citizenship, and erred in drawing conclusions of law from acts and expressions of Knauer before and after the decree of naturalization, and in decreeing upon such conclusions.

The District Court erred in decreeing vacation of the naturalization judgment of the State Court and the cancellation of Knauer's certificate of naturalization upon evidence of intrinsic fraud.

The Circuit Court of Appeals erred in affirming the decree of the District Court.

The Circuit Court of Appeals and the District Court each erred in disregarding the rule of evidence and decision promulgated by this Court in *Schneiderman* v. *U. S.*, 320 U. S. 118, and *Baumgartner* v. *U. S.*, 322 U. S. 635.

ARGUMENT.

I.

Section 738 of the Nationality Code provides a new duty for District Attorneys, but does not create a new jurisdiction in courts of equity. The District Attorney has here asked for relief from intrinsic fraud, the remedy for which, lies in the field of error, and over which equity does not extend its remedies.

Section 738 of the Nationality Code, first enacted in 1906 and re-enacted in 1940, provides that it shall be the duty of United States District Attorneys, upon affidavit showing good cause, to institute proceedings in naturalization courts,

> "for the purpose of revoking and setting aside the order admitting such person to citizenship and cancelling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

As first enacted in 1906, it provided only for cancellation of the Certificate of Naturalization. As re-enacted in 1940, it was broadened to include revoking and setting aside the judgment of naturalization.

A thoughtful observation of Section 738 leads to the conclusion that it creates, or particularizes, a *duty* for the District Attorney and does not create a new jurisdiction in the Courts. The jurisdiction to be invoked is as old as the hills and inherent in the Court,—the power to make its judgments speak truth, to purge its records of fraud, and grant relief to persons injured thereby. The Courts have always had that power; but District Attorneys, it

would seem, would otherwise have no such duty, that duty resting upon the Attorney General of the United States. (*Throckmorton* v. *U. S.*, 98 U. S. 61, 70.) Always the United States could apply through its Attorney General for a new trial, for a rehearing on newly discovered evidence, or could have moved to expunge the judgment for want of jurisdiction; and like any other litigant, it might ask a court of equity for relief against an extrinsic fraud practiced upon it to procure a naturalization; and since *Tutun* v. *U. S.*, 270 U. S. 568, the road to appeal has always been open to the United States, as one of the parties to the judgment of naturalization.

True, this Court has said that the right of appeal from, and the right to file a bill to vacate a naturalization judgment, are cumulative remedies (*Tutun* v. *U. S.* 270 U. S. 568); but, it is respectfully suggested, those rights, by their very nature, always existed, independent of Section 738, and this Court has so recognized them; but this Court did not say that the remedy in equity for relief from fraud or illegality could also be used as a writ of error to reverse a merely erroneous judgment, not by inspection of the record, but by a retrial of the issues. Each remedy has its distinctive field, and serves its own distinctive purpose.

When *U. S.* v. *Ness*, 245 U. S. 319, was decided, it was assumed there was no right of appeal from a naturalization judgment (p. 336). Later this Court decided in *Tutun* v. *U. S.*, 270 U. S. 568, that a naturalization judgment "like other judgments of a court of record is accepted as complete evidence of its own validity unless set aside" (p. 577), and so has the stability furnished by the doctrine of *res adjudicata*.

An error remediable by appeal or writ of error is one that can be seen on inspection of the record,—whether that error renders the judgment void or voidable. Equity

will relieve from the exercise of rights under a void judgment or a judgment apparently valid but void for extrinsic fraud.

A judgment illegally procured is void because of the absence of some jurisdictional fact either patent on the face of the record, or latent in some jurisdictional fact, obviously existing, but which evidence will disclose did not in fact exist when the judgment was entered. If patent, the judgment is void upon the face of the record and the error may be reached by appeal, writ of error, motion to expunge, or by complaint in equity to cancel a void certificate of naturalization, on the equitable ground of cancellation. And likewise latent extrinsic fraud is remediable in equity.

That the judgment of naturalization is a binding adjudication between the United States and the naturalized person, with all the attributes of finality, is indicated by Congress' direction to District Attorneys to apply to one of the Courts having jurisdiction to naturalize, to vacate the judgment and cancel the Certificate it authorizes, on the ground of fraud or that the judgment order and Certificate of Naturalization were illegally procured (8 USCA Sec. 738).

Here all jurisdictional facts are admitted by the complaint to exist, and the only fraud charged is false testimony at the trial and a false oath of allegiance,—false testimony as to subjective matters respecting intent and mental attitudes,—intrinsic fraud.

When no bill of exceptions is taken to preserve the testimony of witnesses in a trial, their testimony becomes merged in the judgment. Everything necessary to the validity of the judgment is supposed to have been detailed in the evidence.

No one can tell from this record, but that all of the things said against petitioner as happening prior to his naturalization, were made known to the Judge hearing the naturalization proceeding, or was in the preliminary governmental examinations prepared for use and used on trial. There is no evidence in this record to indicate that any fact was withheld from the government or the Judge at the naturalization trial. All of the things said, and that could have been said, are presumed to have been said; proving them a second time, for some other Judge to pass upon, is not the theory upon which such naturalization proceedings rest, and was never in congressional contemplation.

Such a dramatic event as shifting one's nationality, with all its implications, calls for an irrevocable judgment, as well for allegiance as for protection against the renounced sovereign.

It is to be presumed that the Judge of the State Court heard and weighed each fact presented in this record as having occurred prior to April 13, 1937; and it is to be presumed that the Judge there held that there was nothing in those facts, everything considered, inconsistent with the allegations of the application for citizenship, and that every required intention was present, and that every necessary mental attitude existed. All such, once adjudicated, is unchangeably decided.

Intrinsic Fraud Is Not Remediable in Equity.

False testimony is known as intrinsic fraud and cannot be remedied by a complaint in equity. The remedy for intrinsic fraud is in the suit in which the false testimony was given. In *U. S.* v. *Throckmorton*, 98 U. S. 61, 65, this Court said concerning an effort to reach intrinsic fraud by a complaint in equity:

> "The trial is the opportunity for making the truth appear. If unfortunately he fails, being overcome by perjured testimony and if likewise he fails to show the injustice that has been done him on motion for new trial, and the judgment is affirmed on appeal, he is without remedy * * * and so the rule is that a final judgment cannot be annulled merely because it can be shown to have been based on perjured testimony; for if this could be done once, it could be done again and again, *ad infinitum*."

If it could be so done, petitioner might file a complaint to set aside the decree in this case because of the allegedly false testimony of the witness Merton, which petitioner strenuously insisted and still insists was perjured. (Proceedings in *Knauer* case, pages 948-976).

The Federal Courts of Appeal have applied the ruling in the *Throckmorton* case to denaturalization cases. See *U. S.* v. *Norsch*, 42 F. 417 (1890); *U. S.* v. *Gleeson*, 90 F. 778 (1898); see also *Steel* v. *Smelting Co.*, 106 U. S. 447, 453; *Vance* v. *Burbank*, 101 U. S. 514, 519; *Mofat* v. *U. S.*, 112 U. S. 24, 32; *U. S.* v. *Minor*, 114 U. S. 233, 244.

The law has set time limits upon review by writs of error and appeal binding upon the United States the same as any other litigant, at the running of which, all errors for which judgments are voidable only, are cured. The law has set no time limit upon the United States to file a complaint to set aside a judgment void for extrinsic fraud or illegality.

It is to be noted that Section 738 was enacted after this Court had held in the *Throckmorton* case that intrinsic fraud was irremediable in equity; and after the *Norsch* and *Gleeson* cases had applied the doctrine of the *Throckmorton* case to denaturalization judgments. And the provisions of Section 738 were re-enacted in 1940 after this Court had held in the *Tutun* case that a natur-

alization proceeding was a case and that its errors might be corrected on appeal. From which the presumption appertains that Congress adopted the laws with those constructions.

And so it appears obvious that Section 738 did not change equitable procedure nor the basis upon which must rest all complaints in equity to vacate or overthrow judgments for fraud.

Fraud to Be Relievable Must Be Extrinsic.

Fraud to void a naturalization judgment must be extrinsic and with reference to some demonstrable, objective fact, giving jurisdiction to hear, or some matter connected with the management of the law suit.

The basis of this suit is intrinsic fraud. The complaint originally charged that the naturalization certificate was procured "fraudulently *and* illegally" and on trial was amended to read "fraudulently *and therefore* illegally"; the charge being that the representations made in his petition and in his oath of allegiance were false.

Mistakes made in the trial of the issues pertaining to subjective matters are in the field of error, and are merged in judgment; the judgment is the act of the Court, not the parties, and is not subject either to collateral overthrow or direct attack upon an allegation in a complaint in equity that the testimony heard was false, or that the case was erroneously decided.

In the case of *United States* v. *Throckmorton*, 98 U. S. 61, this Court passed upon a Complaint filed by the United States to relieve from alleged fraud in the procurement of a decree where the complaint charged that

a land grant had been fraudulently antedated and that the defendant had supported the antedated grant with depositions of perjured witnesses, after discussing the basis of the relief there asked, and the adjudications pertaining to such question, said, (p. 68):

> " • • • the acts for which a court of equity will on account of fraud set aside or annul a judgment or decree, between the same parties, rendered by a Court of competent jurisdiction, have relation to frauds, extrinsic or collateral to the matter tried by the first court, and not to fraud in the matter on which the decree is rendered."

Fraud is said to be intrinsic where the fraudulent matters were in issue and could have been or were adjudicated; see *Hilton* v. *Guyot*, 159 U. S. 113, where it was held that the rule did not apply to judgments of foreign countries. Five judges so holding, and four being of belief that the rule should apply to all judgments); and where the Court had before it the same issue of fraud and the same essential facts. (*Toledo S. C.* v. *Comp. Scale Co.*, 261 U. S. 399).

The textbook says that the theory of the ruling is that relief from intrinsic fraud is denied because the issue was tried; and that relief from extrinsic fraud is allowed because there never was a trial (31 Am. Jr. 232).

The charge that the certificate was procured "fraudulently and therefore illegally" only means, legally speaking, that the charge is one of fraud. The type of fraud contemplated by the Statute has to do with some type of deception or imposition upon the court or counsel; an example of which is *Toledo S. C.* v. *Comp. Scale Co.*, 261 U. S. 399, where it appeared that one party gathered up and concealed all the evidence so as to deprive the opponent of a fair trial; or as in *Johanssen* v. *U. S.*, 225

U. S. 227, where Johanssen produced false witnesses as to the length of his residence which was only four years.

Such fraud is collateral to the issues,—never in them, or of them; is distinct from, and a legally different thing than, illegal procurement, and was, it is thought, so considered by Congress.

Nature of Illegal Procurement.

Illegal procurement, as distinguished from fraud, and as obviously visioned by Congress, is mistakenly or erroneously obtaining the naturalization judgment and certificate upon a record wherein there is wanting some one of the objective jurisdictional prerequisites, the presence of which is necessary to enable the Court to proceed to a trial of the subjective issues; as, for example, where there was no certificate of entry attached to the petition (*U. S.* v. *Ness*, 245 U. S. 950); where witnesses are not competent; where the required length of residence was not present, (*Johanssen* v. *U. S.*, 225 U. S. 227), or where some jurisdictional procedural requirement was not observed, as where the hearing was not held in open Court (*U. S.* v. *Ginsberg*, 243 U. S. 472). These examples are not fraudulent matters (except Johanssen who was also guilty of fraud); they arise from mistakes, errors and omissions.

Inasmuch as the charge here made has no reference to a judgment void for want of jurisdiction to hear the application, or for other jurisdictional defect, there was no illegal procurement, as all else pertains to trial and decision upon evidence pertaining to subjective matters,—errors in deciding which lie in the field of error. The amendment of the Complaint did not change the substance of the charge, which, being one of intrinsic fraud, inherently admits the legality of the proceeding.

A charge of intrinsic fraud does not challenge jurisdiction, it admits it. It raises a question of error only. It raises no issue for adjudication. It is a feigned issue. It does not present subject matter for adjudication.

The issues having been once adjudicated, this suit was therefore erroneously tried without subject matter.

II.

Where the necessary jurisdictional facts are in a naturalization record, a decision of the naturalization court upon subjective issues is res adjudicata, and the remedy for erroneous appraisal of the facts, or false swearing, is by application to the naturalization court for a reconsideration of the issues, and, if not allowed, appeal therefrom to correct errors. Equity is not the forum for such relief.

A.

The United States is in charge of all naturalization proceedings and in legal effect a party litigant; made so by actual participation under authority of the statute and rules made pursuant to the statute.

It cannot be seriously contended that the United States is not a party litigant to a naturalization proceeding, for the Congress authorized its appearance (Sec. 734) and made it an active participant in such proceedings; the naturalization service supplies forms, makes investigations, takes depositions, makes reports and files them in the cause. The Service checks every applicant.

The United States may have a review of the proceeding in the Circuit Court of Appeals, or in the State Court of Appeals, as may be, if it desires to question the judgment of the naturalization court.

The Government Guides the Alien to Citizenship.

From the day the applicant leaves the old country down to the moment of the final judgment of the naturalization, the United States Service watches over him. It is present at all of the preliminaries; it prepares the evidence, fills out the forms, examines the witnesses, searches the mind, the conscience of the applicant; educates him, attends the trial, hears the evidence, examines witnesses, objects, excepts. It either states there is no objection, or makes specific objection to the applicant. The Government is in fact the applicant's next friend, watching, counseling, advising, educating,—but if not satisfied, objecting, excepting, appealing.

In *U. S.* v. *Kusche*, 56 F. Supp. 201, 230-233, the learned District Judge, Pierson M. Hall, in passing upon a group of Bund denaturalization cases, after detailing the many administrative activities of the Department in connection with the naturalization of an alien, said this (p. 233):

> "From the time the alien institutes in the country of his origin, with the American Consul, his application for a visa quota number, until the final oath, he is not opposing any Government officer or agency, or proceeding without them. But the Government literally takes the alien by the hand and leads him through this maze of forms, questions, examinations and re-examinations, and oath and swearings, including his education in the principles of the Constitution. The Government in effect is the alien's guide and mentor, and for all practical purposes has control of the proceedings. The alien can abandon his desire to proceed, but he cannot do anything about it. At no time can the applicant move forward towards his naturalization without going to the Naturalization Service of the Government or using

the forms they supply to him, and in fact cannot go forward without the aid and assistance of the Government."

Judge Hall could have added other suggestive regulations. In 8 CFR 70.14 it is provided that where objections "by the Service to the granting of a petition for naturalization is overruled by the court, exception should be noted of record" and a "comprehensive report" made immediately in order to permit prompt determination of the question of review of the court's action through Appellate, cancellation or other proceedings". And in Section 70.22 (8 CFR) it is provided that in final hearings in open court where there has been preliminary examinations, "the examination shall be conducted by the naturalization examiner or officer in such manner that the rights of the United States will be conserved under Section 11 of the Act of June 29, 1906, (34 Stat. 599) • • • If material objection be overruled by the Court, an exception will be noted for possible action on review and leave obtained from the court to submit the objection in appropriate form for the record".

70.11 (8 CFR) provides that Naturalization officers are authorized to appear in naturalization cases and participate in examinations on behalf of the United States, call witnesses, produce evidence and be heard in opposition to applications, and have a stenographic report made of the proceedings. And 70.12 (8 CFR) provides that if it is impossible for the Service to be represented in person in Court that that fact shall be transmitted to the Judge of the Court signed by the District Director or Divisional Director and mailed in ample time in advance of the hearing; that the petitions due to be heard are to be listed on the appropriate form with number and name, and with all statements of fact below the number and name of the case; and also "show all facts that have been

developed that may be unfavorable in nature, and, if any, the grounds for objection, with pertinent comment and citation of authorities in support of the objections. In favorable cases it will be stated that no objection appears."

By 70.19 (8 CFR) the officer conducting the preliminary hearings is required to keep a docket record on the named form of his findings, favorable and unfavorable, with reasons for unfavorable findings which is to be made available to the Judge when desired.

So completely under the control of the Department is the naturalization proceeding considered to be, that examiners and officers are warned that they "have no right or authority to administer the oath of allegiance to the petitioner who must appear in person in open court at the final hearing before the Judge of the Court for that purpose". (8 CFR 70.19).

The United States Is an Active Party Litigant.

In view of these regulations it is seen that the United States considers itself an active party litigant in each case; and it is seen that it actually appears in the conduct of the trial, or that it files a report therein either consenting to the applicant's admission, or objection thereto with reasons and a brief. The rules so authorize and direct, and we may assume the persons in charge perform their duties without proof that they do so.

The United States being in fact a party litigant in each case either consenting to the applicant's admission or objecting, it stands before the Court the same as any litigant and is bound by the same rules of law and evidence.

Knauer's answer sets out that after he filed his petition for citizenship he was investigated by various governmental agencies as to his character and beliefs from

the date of his arrival in the United States to the date of the hearing on his application; that he produced two competent witnesses as to his character, qualifications and beliefs which were found to be above reproach and in full accord with the statements and declarations in his petition.

Whether the Government agency charged with such investigation consented, or objected to Knauer's admission to citizenship, is not shown. If the agency consented the Government should be bound by its action; and if the Government made no objection or defense, its remedy if it were not satisfied was to appeal. It should not be heard to challenge a judgment years later which it stood by and saw entered when the facts were known to it, or accessible to it,—facts that is, proper to be heard by the court upon the issues submitted by Congress to the Courts for adjudication.

No showing is made by the Government as to when it first learned of the facts it relied upon or why they were not sooner brought to the attention of the Court, and it must be assumed those facts were at all times known to the Government.

Here the doctrine of *res adjudicata* applies to all evidence introduced, or that could have been introduced, as to all subjective matters in issue pertaining to the period prior to April 13, 1937 and the judgment is final, there having been no appeal to test out the correctness of the adjudications, and existence of the objective facts being admitted.

Both Litigants Are Bound By the Adjudication.

If any one of the objective qualifications, such as declaration of intention, years of residence, competent witnesses, port of entry, hearing in open court, etc., etc., is

missing, an applicant has not become a citizen, the judgment being void and subject to collateral attack. No one is bound to respect such judgment. It is void for want of subject matter.

The subjective elements,—intention, attachment to Constitutional principles, mental attitudes and behavior, are specifically submitted by Congress to the Courts for adjudication. Proof of these matters requires evidence by witnesses, to the satisfaction of the Court. When such judicial investigation has been concluded, and the applicant ordered admitted, the proofs are merged in the judgment and the judgment becomes the objective fact that binds up all of the subjective matters together so that the citizenship is *de jure* and the finding of the existence of the subjective requirements congeals them into an objective fact along with the declaration of intention, the residence requirement, etc., etc.

When the objective jurisdictional facts admittedly exist, and the subjective issues are tried and the findings merged in the judgment with the jurisdictional facts, both parties are bound by the judgment. The applicant will not be heard to say he did not intend to renounce his allegiance to his native country nor that he took his oath with reservations. He is estopped, and being estopped, the United States is likewise bound. Both are bound or neither.

B.

Where there is jurisdiction to hear, there is power to decide and such decision is res adjudicata.

The Constitution gives no power to Congress to repudiate a naturalized citizen because of subsequent conduct, to deport him beyond the realm, expel him, or destroy his citizenship by any type of action. He stands, when

judicially admitted, upon the same ground as the native born, except as to eligibility to the presidency.

Nor has Congress ever drawn a line between the native born and the "naturalized" citizen so as to put them on a different footing.

And this Court repudiated that doctrine in the *Schneiderman* and *Baumgartner* cases where conduct after naturalization had been erroneously given the same relevancy and probative force as when he was an alien on probation.

To "establish uni" m rules of naturalization", pertains to the admission of persons to citizenship, not to denaturalization after admission. The latter power Congress does not have. But Courts do have power to set aside any of its own judgments when the jurisdictional elements are not present. That power is inherent in all courts and is a necessary power which it exercises to keep its judgments pure and truthful. That power is *recognized* by Congress,—not *granted* by Congress.

It, obviously, never was the theory of Congress to create a system of admitting aliens to citizenship by judicial order, and yet empower District Attorneys to undo, at their discretion, the very adjudications of the Courts so authorized; District Attorneys are only empowered to bring to the official attention of the Courts proceedings by which void certificates have been issued to unqualified applicants, or upon proceedings lacking in jurisdictional support or procured by fraudulent practices.

Where there is jurisdiction to hear the application the judgment is final.

Once a person with the jurisdictional qualifications is admitted to citizenship, he is as a drop of water in the ocean, or a part of the blue in the sky and loses his alien

character. He wears no stigmatizing letter, no identifying apparel, no leading strings, nor straight jacket, as Mr. Justice Murphy terms it. He belongs, and is free to say and do in the American way. He may traduce and denounce or praise and glorify; he may point with pride and view with alarm; he may organize, lead or follow as is the result of liberty of speech and action. He is a citizen.

The Congress did not make it the specific duty of District Attorneys to appear in the citizenship proceedings and try the stereotyped issues framed by Congressional forms, but Congress delegated to the Courts, and to them judicially, the matter of inquiry into, and adjudication of, the issues made by the application and to decide those issues by examination of the applicant, and his necessary witnesses. The naturalization service is a part of the personnel of the Naturalization Court and the court relies upon its aid in conducting naturalization proceedings which are, as is known, held for classes or groups. All proofs made by the Service officer, by the applicant, or by the Court's questions merge in the order establishing citizenship in the applicant and the facts become a thing decided, adjudicated, and *res adjudicata* between the United States and the applicant.

To overturn a naturalization judgment its foundation must be attacked, not its superstructure.

To overcome such adjudication, the requisite evidence must be something that concerns jurisdiction to hear and determine the application, absence of subject matter, something missing or wrong that would overturn the judgment; something of such nature as to prove the judgment to be without foundation.

Error in appraising the evidence on the subjective issues goes the way of all error, through courts of appeal.

The Government did not here plead that it had newly discovered evidence that would prove the falsity of the oaths of the applicant. The allegation goes only to attack the mental attitude and intentions, or lack of intentions, of petitioner at the time he applied for and at the time he was admitted to citizenship, which was the very issue delegated by Congress to the Naturalization Court.

Every objective jurisdictional fact necessary to a hearing upon the application for citizenship is admitted by the Government. The complaint attacks only those subjective requirements which the Congress delegated to the Courts,—the power of establishing citizenship by judicial findings, that are to be made upon oral evidence. And the Government here admits that those judicial findings were made. The judgment admittedly has the correct background and it is fair upon its face.

There is no substantial, first hand, affirmative, direct, evidence in the record tending to prove in any degree that petitioner, when he swore to his application, or when he was examined by the Court, or when he took his oath of allegiance, had any mental reservations whatever, or that he had no intention to observe his oath; or that he had falsified his several oaths. Whatever evidence the Government produced raises only a reflection, deduction, or suspicion.

The Government did not show that applicant swore falsely. It only offered evidence to show that defendant did what native-born citizens might legally do.

Obviously a naturalized citizen cannot be denaturalized, deported, expelled, for the exercise of privileges permissible to the native born. Equal protection forbids.

Where the objective type of jurisdictional facts are present and, after hearing evidence on the subjective issues, an applicant is admitted to citizenship in all due legal form by judicial action, he is then a *bona fide* citizen. That is this case.

Subsequent conduct cannot void a naturalization judgment.

The judgment here is not void in any sense. Nor is it voidable except by appeal. Being then a citizen, albeit, judicially born, the new citizen is then entitled to equal protection of the laws and may not be denaturalized for any cause or reason not going to the jurisdiction of the Court to hear his petition. Subsequent conduct of any type would not render the judgment void.

Being made a citizen by a judicial decree, standing unreversed of record, and performed by the applicant by acceptance and assumption of the status, duties and oblizations of citizenship, the decree has been performed and the whole matter is in the past perfect tense. All acts thereafter done, all opinions thereafter expressed, are those of a citizen under protection of the Constitution and subject to such penalties as the law provides.

The newly-made citizen is bound by his oath of allegiance. Being bound by the new tie the United States likewise is bound. Both are bound or neither.

That such adjudications are *res adjudicata* between the parties, this Court has in effect held or has clearly so recognized.

It is thought that the point was decided in *Ness* v. *U. S.*, 245 U. S. 319, which was a petition in the District Court for the Northern District of Iowa to cancel a certificate

of naturalization of a State Court for failure of *Ness* to file with his petition a certificate of the Department, "stating the date, place and manner" of arrival as provided in the Act. The United States had entered its appearance in the naturalization proceeding and moved to dismiss on the ground that such certificate was not filed. The motion was considered and denied. Petitioner and his witnesses were heard and the naturalization granted.

At that time, 1917, it was considered that appeal did not lie from the order of naturalization (p. 326).

Within six months the Government filed complaint to cancel the certificate of naturalization of the State Court.

Ness showed that when he arrived from Norway he was ignorant of the law, and unobserved, strayed away and entered the United States without being physically examined, paying the head tax, or having his entry registered. After being admitted to citizenship he offered to pay the tax and take the physical but was refused. All other qualifications he had.

It was claimed by Ness that the missing certificate was a matter of form but it was held that it was one of substance which the Court had no power to waive, hence jurisdictional.

It was claimed by Ness that in any event the judgment was *res adjudicata* because the Government had appeared and contested. The Court, speaking through Mr. Justice Brandeis, said:

> "Opposition to the granting of a petition for naturalization may prevail because of objections to the competency or weight of evidence, or credibility of witnesses or mere irregularities in procedure. A decision on such minor questions, at least of a State Court of Naturalization, is, though clearly erroneous, conclusive even as against the United States if it en-

> tered an appearance under Section 11. For Congress did not see fit to provide for a direct review by appeal or writ of error" (pp. 325-326).

This Court reversed the decree and held that the naturalization certificate was "illegally procured", which it obviously was, for such certificate is required by law to be filed with the application and is a jurisdictional condition precedent, and the certificate issued pursuant to a void judgment.

Since that decision, this Court considered *Tutun* v. *U. S.*, 270 U. S. 568, and held that an appeal may be taken from naturalization judgments and the objections that might be asserted because of lack of a specific appearance by the Government in the case disappear, if any ever were tenable. The doctrine announced in the *Ness* case should apply to all issues decided upon oral evidence.

The *Ness* case lends support to the contention here made that the decision of a naturalization court is *res adjudicata* on all subjective issues tried by *pro* and *con* testimony so as to reduce the unknown quantity to a fact, —which fact, so ascertained, is then a jurisdictional capstone to the naturalization structure. And the fashioning of that capstone is one submitted by Congress to the Naturalization Court.

The same question was before this Court in *Schneiderman* v. *U. S.*, 320 U. S. 118, where it was contended that *Schneiderman* had falsely concealed his membership in the League and the party (Communist) from the naturalization court and that his oath of allegiance was false (p. 129). The trial court had held that the oath was false and the certificate illegally and fraudulently procured. The opinion of this Court was based on the question of fact, reversing on the ground that the charge was not proven by clear, convincing and unequivocal evidence.

But Mr. Justice Douglas, concurring, took the position that when the statutory requirements of a naturalization judgment are in the record, fair upon its face, its sufficiency to support the judgment cannot be questioned (pp. 164-165), which means, as we interpret, that, given jurisdiction, all those matters, subjective in nature, submitted by Congress to the decision of the Naturalization Court upon issues, is *res adjudicata*.

And Mr. Justice Rutledge also concurring was of opinion that Congress had no power to submit the naturalization of citizens to the Courts for judicial determination with a string attached to pull him back to the status of an alien at will; *i. e.*, that where there is jurisdiction to hear evidence the judgment of the Naturalization Court upon the issuable facts, becomes final and may not be reviewed collaterally or the facts tried out *de novo*, which means that the naturalization judgment is *res adjudicata* on those matters referred by Congress to its designated naturalization courts.

And it is respectfully suggested that where the jurisdictional facts are in the record the judgment of naturalization cannot be attacked either collaterally or directly. The remedy is appeal by the party aggrieved.

The defendant is bound by the judgment, if against him, on that doctrine, and so must the United States be.

All of which is consistent with the right of the United States to collaterally attack a judgment of naturalization of a State Court on the ground that some jurisdictional fact necessary to its validity is missing, rendering it void. A void judgment may be attacked anywhere, any time.

A judgment is not void which has been entered upon an issue, if the Court has jurisdiction to decide the issue. Such a judgment is *res adjudicata* between the parties and not subject to be again litigated.

A litigated fact, not involving jurisdiction to hear, becomes a fixed fact, indisputable.

III.

The complaint being one for intrinsic fraud does not state a cause of action in equity, and the decree is without jurisdiction of subject matter.

The complaint in this case does not state a cause of action in equity to vacate the judgment of a court of coordinate jurisdiction or cancel or annul its certificates; where the scope and purpose of the complaint is to overturn the judgment on the ground of intrinsic fraud no statement of facts however detailed will aid it. Here only ultimate facts are pleaded, but the complaint plainly shows that it seeks relief from intrinsic fraud, and nothing else.

The charge in the complaint that the statements and oath of petitioner were false and fraudulent as to subjective matters submitted to the Courts by Congress for decision, upon evidence to be adduced, does not overcome the force and effect of the admittedly valid judgment of the Wisconsin State Court upon that very evidence, which stands as a thing decided between the parties. The force of the adjudication of the Wisconsin State Court, which admittedly had jurisdiction to hear and decide, is stronger than the abstract charge of fraud in reference to the adjudication of subjective issues specifically entrusted to it by the Congress.

The bare allegation of intrinsic fraud, stated in the form of a conclusion, has made this record of 2500 pages of testimony, and hundreds of exhibits, possible.

Judgments of naturalization are not vacated as matter of course, and Congress could have no intention of mak-

ing judgments of naturalization vulnerable to abstract charges of fraud.

Citizenship is not so cheap.

IV.

If there is jurisdiction to administer the oath of allegiance the status of the citizen is irrevocably created.

The statute provides that the applicant shall, before being admitted to citizenship, take the oath of allegiance in open court. All of the declarations appearing in the oath have necessarily been adjudicated. The ideas first appear in the Declaration of Intention wherein it is stated that the declarant intends to become a citizen of the United States and will renounce all fidelity to the native land (8 U. S. C. A., Sec. 731). Again in the application for naturalization it is stated that it is the applicant's intention to become in good faith a citizen of the United States and that it is his intention to renounce all fidelity to the sovereignty of which he is subject (8 U. S. C. A., Sec. 732). And then in the oath taken in open court, before he is admitted by the decree of the court, the applicant makes oath that he does then and there renounce and abjure all allegiance and fidelity to his nature land or sovereign and that he will support and defend the Constitution and laws and bear true faith and allegiance to them and does so without mental reservation (8 U. S. C. A., Sec. 735).

The oath of allegiance follows upon the adjudication by the court that all necessary facts exist which enable the applicant to be and become a citizen. Taking the oath of allegiance is the step by which the applicant renounces his native country and attaches himself to the United States, and upon which the United States accepts him as a member of its citizenry.

Where there is jurisdiction to adjudicate a petitioner to be a citizen, and the adjudication is made, only the oath of allegiance is needed to complete the process. It is the judgment that qualifies the applicant to become a citizen; it is the oath that binds the applicant to fealty and makes him a citizen. An oath of allegiance would not be necessary except that Congress exacts it as an objective action that is readily provable.

The oath of allegiance cannot be detached from its mooring and considered as a thing apart. It is an essential part of the judicial proceeding and is entered into in open court as a part of the hearing and is allowed only after the court has adjudicated the very facts the oath contains. The facts contained in the oath are *res adjudicata* in the proceeding.

The minds meet when the evidence has been heard, the court adjudicates that the jurisdictional facts are present, and the applicant swears allegiance to his new sovereign. From that point on, neither may deny the right of the other.

It is not believed that the question of fraud in taking an oath of allegiance can be raised as is asserted here by the Solicitor General. It is not denied that an oath was taken as required by statute. That stands admitted. When the oath is taken the applicant is bound to the sovereign and may not be heard to say that he did not mean it, or that he had mental reservations; for immediately upon the taking of the oath the Government may exact every obedience from the new citizen as if native born.

And conversely the new citizen may ask every protection guaranteed under the Constitution and laws.

The oath taken is obviously binding upon the applicant. By it he renounces his allegiance to his native land and by it he owes fealty and allegiance to the United

States. He cannot be heard thereafter to contradict it, and grave doubt exists if the Government, taking and accepting the oath, should be heard to challenge it.

If an oath is taken in court to testify to the truth, the witness is qualified to testify. If he commits perjury he is punished for his acts as a witness, but he is still a witness.

An oath of office qualifies the office holder. He then owes to the public the duties of his office and cannot be heard to deny his oath. Nor can the Government he serves question his oath.

When parties are married they may not later claim mental reservations and deny the obligations of the marriage.

It is the oath of allegiance of the inductee that ends his civilian status and dates the commencement of his soldier status. (*In re Grimsley*, 137 U. S. 140).

It is the oath of allegiance that qualifies the applicant to be a citizen, by it he becomes a citizen. The oath seals the mutual undertakings of the parties and the applicant cannot then be heard to say to the contrary, nor can the United States raise the question of mental reservations in the taking of the oath. There can be no mental reservations in an oath. It is taken without mental reservations, and none can be asserted.

If there were no oath taken the tendered citizenship would not for that reason operate to become effective. But where the oath was admittedly taken it is conclusive upon both parties.

If there is an oath taken in due legal form, as required by the Government's forms, it cannot be adjudicated to be void upon any ground of mental reservation.

Perjury is based upon the validity of the oath, not upon any mental reservations in the mind of one who takes the oath.

The Oath Creates the Status of Citizenship.

An oath of allegiance is a pledge of fealty. It cannot be recalled by the maker and when accepted and acted upon by the Government it is binding on both parties and the new status cannot be overturned or set aside upon any thought that the oath is not binding. The oath is binding.

Suppose some treasonable conduct were indulged in after the oath were taken, can it be said that the Government shall have the option to treat the oath as fraudulent and cancel the certificate of naturalization, or to prosecute for treason and punish for that crime?

Obviously when the Government may punish the naturalized citizen for some crime because he is a citizen, then the oath must make him a citizen when the oath is taken. The oath here creates the *status* of citizenship.

The Government should not be heard to raise the question that an oath of allegiance was made with reservation, years after it received it as binding evidence of naturalization. If it is permitted to do so, no naturalized citizen may say his citizenship is safe for prior adjudications will not protect him.

In this case the Solicitor General admits that the naturalization proceeding in the State Court had every jurisdictional element; that it took the oath and gave the certificate of naturalization; and the Government is here estopped to challenge that record except for extrinsic fraud or lack of some jurisdictional element and no such defect is claimed to exist.

V.

The trial in the District Court and the decision in the Circuit Court of Appeals violate the positive rule announced in the Schneiderman case and confirmed in the Baumgartner case,—that to support a decree cancelling a certificate of naturalization conduct prior to the naturalization judgment must be clear, unequivocal and convincing; and that conduct as a naturalized citizen subsequent to the naturalization judgment is of little relevancy.

The clouds had been gathering for a year or two prior to the decision of the *Schneiderman* case, and there had developed a policy and movement in the Government to group together for trial persons charged with having obtained their naturalization certificates by fraud and illegality. Such trials were developing in all or most of the Circuits. It was a war time program, obviously intended to sift out any alien enemy who might be operating under cloak of a naturalization certificate, illegally or fraudulently obtained. It was a tremendous threat and well calculated to still the voice of sympathy for the homeland and quiet any opposition to the war program. It was in light of that condition that the *Schneiderman* case was argued, considered, re-argued, re-considered, and decided; and the rule announced was obviously made to aid trial courts and Appellate tribunals in disposing of the many cases working their way through the dockets, as the opinion indicates.

In the *Schneiderman* case, decided June 21, 1943, this Court changed the civil evidence rule in denaturalization cases from probability to clear, convincing and unequivocal evidence that leaves no doubt; and, holding that such measure applies to expressions and conduct in the period

prior to the judgment of naturalization, upon which the right to a certificate of naturalization must depend; and holding that conduct and expressions after being made a naturalized citizen were of little relevancy in determining the mental attitudes and behavior prior to the admission to citizenship.

When this Court filed its opinion in *Schneiderman v. U. S.*, 320 U. S. 118, its far reaching effect became immediately known. It had been publicly known that it had been argued and re-argued, and when decided the public press carried its import and the opinion became available to judges and attorneys, as a chart and guide.

The group of Milwaukee cases had been prepared while the *Schneiderman* case was pending in this Court and under consideration; this case was filed on February 3, 1943, on May 12, 1943, motion was made to consolidate the several pending cases and on June 16, 1943, the order of consolidation was entered.

On June 21, 1943, the *Schneiderman* case was decided. On June 30, 1943, the Circuit Court of Appeals for the Seventh Circuit filed its opinion in *U. S.* v. *Krause*, 136 F. 2d 935, in which it considered the effect of the *Schneiderman* case on the Bund cases, and instead of following it, held, in effect, that the *Schneiderman* case was an isolated case and was not intended to affect the theory on which denaturalization cases had been tried up to that date, *i. e.*, by considering the evidence of the whole conduct of the applicant before and after naturalization and down to the date of trial as of equal relevancy.

On September 10, 1943, a pretrial conference was held in the Bund cases and a plan of procedure was adopted. The statements of the trial judge made on that date are not in the record; but, on the opening of the trial of the case on September 21, 1943, for the benefit of some

who were not present at the pretrial conference, the trial judge announced his position with reference to the relevancy of the statements and conduct of the defendants.

The trial judge, I feel it my duty to say, purposely did not follow the rulings of this Court in the *Schneiderman* case. His refusal or failure to do so was on the ground that the Circuit Court of Appeals of the Seventh Circuit had held that this Court had not overruled the long line of cases in which citizens had been denaturalized on proof of acts and expressions years and years after naturalization; and his hesitancy to follow the ruling of this Court was that he felt "bound to follow" the interpretations put by the Seventh Circuit Court of Appeals upon the rulings of this Court in the *Schneiderman* case, regardless of his personal interpretations,—for he remarked to all counsel and litigants in advance of trial how he would rule. At the pretrial conference he stated his position and at the opening of the mass trial he reiterated it, remarking:

> "I should repeat here what I said at the pretrial conference, that it will be my *endeavor* in this case to apply the rules as laid down by the Supreme Court *and as interpreted by our Circuit Court of Appeals of the Seventh Circuit.* It may well be that their interpretation *does not entirely coincide with some other Circuit Courts of Appeal, but I feel bound to follow as nearly as I can their opinion in this matter, their ideas, their interpretation.*" (Mass trial Record p. 18).

That was the viewpoint of the trial Judge when he started and which he consistently maintained throughout the trial; and when the *Baumgartner* case was here decided, and he had seen the opinion before he filed his findings, he added a comment to his findings, that he had seen the *Baumgartner* opinion but still adhered to his

viewpoint that the subsequent conduct of petitioner proved petitioner guilty of fraud beyond all doubt and refused to rule that the subsequent conduct of petitioner was not relevant or controlling (Tr. 43).

It is of marked significance that along with his comment on the *Baumgartner* case the trial Judge filed an opinion in support of his findings and conclusions in which *he did not mention the Schneiderman case; he did not try to follow it, he ignored its rule, teaching, and logic.* On the contrary his opinion cites the line of extreme cases where citizens had been denaturalized on subsequent conduct, and the doctrine of all of which was overruled by the *Schneiderman* and *Baumgartner* cases, and some of which were later reversed in their Circuit Courts of Appeals.

In his opinion the trial judge relied upon the case of *U. S.* v. *Krause*, 136 Fed. 2d 935, (Seventh Circuit) in which that Court said that it did not believe that this Court intended to overrule the long line of cases in which subsequent conduct and expressions had been relied upon as competent proof; there was no prior conduct shown in that case; so it would appear that the Seventh Circuit Court of Appeals was appraising the rule announced in the *Schneiderman* case as isolated and as applying to its own peculiar facts for it says (p. 939):

> "We are convinced that in the case at bar (*Krause* case, 136 F. 2d 935, 939) the Government *did sustain* the burden of proving that appellant's *conduct and expression in later years* were opposed to the principles of the Constitution. *Applying the long line of cases* (none cited) *the* (Supreme) *Court does not overrule in the Schneiderman case*, we are further convinced that *such conduct and expression may be relied upon to* show that the oath of allegiance was taken with su[illegible] mental reservations as to render it wholly nugatory, and that being the case, that the

certificate of citizenship issued in reliance thereon was *illegally procured.*" (Italics for emphasis).

From that statement it is seen that there the affirmance was based on "conduct and expression in later years".

That is the ruling of the Seventh Circuit Court of Appeals made in face of the expression of this Court in the *Schneiderman* case (p. 147):

> "Since the immediate problem is the determination with certainty of petitioner's beliefs from 1922 to 1927, events and writings since that time have little relevance, and both parties have attempted to confine themselves within the limits of that critical period."

And the trial court, in the case at bar following the ruling in the *Krause* case, ignored the rule of the *Schneiderman* case and adhered to his decision in face of the positive statement in the *Baumgartner* case appearing on the Concurring Opinion of the Justices who wrote the opinion in the *Schneiderman* case (p. 678):

> "The decision in the *Schneiderman* case was not merely a decision of an isolated case. It was a formulation by a majority of the court of a rule of law governing all naturalization proceedings."

And that, with certainty, meant this case which he was then deciding.

Your petitioner respectfully suggests that the Seventh Circuit Court of Appeals appears by its opinions not to have grasped the basic significance of the increase in the degree of proof of prior conduct, and the depreciation of the relevancy and value of subsequent conduct and expression, wrought by the decision in the *Schneiderman* case, and as confirmed in the *Baumgartner* case, and that the Seventh Circuit is out of step with the judicial trend.

Other Circuit Courts of Appeals and District Courts are following those rulings.

The Fifth Circuit Court of Appeals recognized the change in reversing the trial Court in *U. S.* v. *Meyers*, 141 F. 2d 835, 826, 832. And the Judges in the Ninth Circuit also follow on the same theory, in *Bergman* v. *U. S.*, 144 F. 2d 34; also *U. S.* v. *Kusche*, 56 F. Supp. 201, 238-239. The Second Circuit follows, *U. S.* v. *Rossler*, 144 F. 2d 576; as also the Fourth Circuit, *Orth* v. *U. S.*, 142 F. 2d 898.

The Cases Relied on By the Trial Court.

The following are thumbnail sketches of the cases the trial Judge relied upon in preference to following the rule in the *Schneiderman* and *Baumgartner* cases.

U. S. v. *Krause*, 136 F. 2d 935, where a certificate was cancelled for subsequent conduct, which that Court spoke of as "illegally procured".

U. S. v. *Chuckardt*, 49 F. Supp. 567, where a certificate was cancelled in reliance upon *U. S.* v. *Baumgartner*, 138 F. 2d 29, 47 F. Supp. 622 subsequently reversed; and *U. S.* v. *Bergman*, 47 F. Supp. 675, which was subsequently reversed in 144 F. 2d 34, in reliance upon the *Schneiderman* case.

Schurmann v. *U. S.*, 264 Fed. 917, where Schurmann's Certificate issued in 1906 was cancelled for statements made in 1917.

U. S. v. *DeTolna*, 27 F. 2d 984, where his certificate was cancelled on his *admissions* that his witnesses were not qualified; which case was *properly decided* because the certificate was *illegally procured*.

U. S. v. *Kuhn* and 19 others, 49 F. Supp. 407, decided before the *Schneiderman* case where preponderance was

the rule and reliance was placed on the subsequently reversed *Baumgartner* case. The case of those of the defendants who appealed were reversed, 144 F. 2d 576 in reliance upon the *Schneiderman* and *Baumgartner* cases.

Turley v. *U. S.*, 31 F. 2d 696, decided before the *Schneiderman* decision and where the conduct of the defendant was held relevant down to the date of the trial.

U. S. v. *Orth*, 51 F. Supp. 682, which was subsequently reversed, 142 F. 2d 969.

U. S. v. *Holtz*, 54 F. Supp. 63, where the trial Court applied the doctrine of "relation back" and which case has clearly ignored the rulings in the *Schneiderman* and *Baumgartner* cases.

The trial Court, it is obvious, made no effort to decide this case upon the evidence of actions and statements of petitioner prior to his admission as a citizen, or even to evaluate them separately.

The record is top heavy with evidence as to what was said and done after April 13, 1937. There is nothing in this record transpiring prior to April 13, 1937, that can be said to be inconsistent with petitioner's application for citizenship or with his oath of allegiance, or tending to show that any fraud was practiced upon the government or court, or that petitioner in anywise perjured himself or misrepresented any fact; and none that his witnesses were in anywise incompetent or untruthful.

In fact there was no attack made upon the regularity and conclusiveness of the record of the Wisconsin State Court, nor is there such thought in the form of, or charges in, the complaint.

The sayings and doings of petitioner after April 13, 1937, are practically of no probative effect. Petitioner was then a citizen; and, if what he did as a naturalized

citizen was permissible to a native born citizen,—and there is no contention that it was not, then the fact that he exercised the prerogative of the native born, should not be heard as evidence that fraud and perjury were theretofore committed at the time he was naturalized.

Proof of things legally permissible to a native born citizen is no evidence of criminality if done by a naturalized citizen.

In the *Schneiderman* case this Court said that actions and expressions after an order of naturalization are of little relevance and that the five-year period prior to admission was the critical period of inquiry (p. 147).

In the *Baumgartner* case it is said in the concurring opinion that the decision in the *Schneiderman* case "was not merely a decision of an isolated case. It was a formulation by a majority of the Court of a rule of law governing all denaturalization proceedings" (p. 678).

The Court's opinion in the *Baumgartner* case points out that what is done after naturalization is not done by an alien *but by a citizen* with all the rights of the native born. The opinion in the *Baumgartner* case says:

> "New relations and new interests flow, once citizenship has been granted. All that should not be undone unless the proof is compelling that that which was granted was obtained in defiance of Congressional authority" (p. 675).

That means, of course, that what transpired before the date of the judgment of naturalization is the real inquiry; for if those facts would not bar the right to citizenship, then the judgment of naturalization was right and all subsequent conduct would be that of a citizen and without any relevance or significance.

The concurring opinion in the *Baumgartner* case points out that a newly naturalized citizen "does not lose the

precious right of citizenship because he subsequently dares to criticize his adopted Government in vituperative or defamatory terms" (p. 629), which means that conduct subsequent to naturalization is of no value on the issue in question.

Neither the trial Court nor the Circuit Court of Appeals appraised the facts according to the periods before and after naturalization, nor gave them their relative significance and weight; the viewpoint of each court is out of harmony with the decisions of this Court in the *Schneiderman* and *Baumgartnet* cases, and in conflict with the rulings and decisions in other Circuits, and should be reversed accordingly.

VI.

Documents showing the mental attitude of Knauer toward our Constitution and laws are set out in the Appendix hereto.

One of the difficulties in this case is the fact that Knauer tried his own case and although possessed of much intelligence and native ability, his defense suffers because it was not shaped and presented by a trained legal mind. The Court said:

> The Court: I recognize the difficulty of one not being a trained lawyer presenting the evidence in proper form and I am going to exercise rather wide latitude in permitting this defendant to try to present his viewpoint in his own way as best he can (Knauer Record 870).

However, Knauer did stamp upon the record that his objectives and purposes were all directed toward saving the group of citizens of German origin from defamation and smear propaganda.

A large number of letters, telegrams, articles, clippings, etc., were put in evidence by Knauer which reflect his mental attitude and his activities. The trail of ink which Knauer left behind him graphically speaks his viewpoint and attitude toward the Constitution and laws and demonstrates his oath of allegiance was true.

When it came the turn of Knauer to testify, the trial judge saw vividly the difficulty ahead. Addressing Mr. Knauer, he spoke:

> The Court: (Addressing Mr. Knauer) I presume you want to take the stand yourself to answer?
>
> Mr. Knauer: Yes, I would like to present some evidence.
>
> The Court: Very well, you can come over here and be sworn as a witness, and then we will see how we can get along without questions and answers. Just take the stand.
>
> Mr. Knauer: Now, at first I would like to point out that actual persecution of German Americans took place, and I would like also to emphasize what steps were taken either by myself or by the German American Citizens Alliance.

Knauer introduced in evidence a series of documents, a selected few of which are shown in an Appendix hereto. After the introduction of the documents Knauer proceeded to testify as to his mental attitude and intentions at the time he was admitted to citizenship. Under the influence of the recital of his sufferings, his philosophy, beliefs and actions, he passed from witness into advocate and finished in an oration in his defense. Inasmuch as it all goes as a direct answer to the charge in the complaint that he had falsified his oath of allegiance and the charge that he was not attached to the principles of the Constitution, it is printed in full in the Appendix (Knauer Record 915-924).

VII.

The findings of the trial Court and the judgment of the Circuit Court of Appeals reflect the influence of war hysteria.

All evidence introduced by the Government in support of its issues is circumstantial. None of it tends to show that Knauer was not attached to the Constitution while much of it does reflect an admiration of and attachment to its concepts. The activities of Knauer center around the German American Citizens Alliance of which he became an officer. It was just in its infancy when Knauer joined it a few weeks before he received his certificate of naturalization. The Alliance was chartered under Wisconsin laws "to unite into a union and federation all societies in Wisconsin whose members are of German origin: to maintain and support the Constitution of the United States in its integrity; to preserve all rights unabridged which the Constitution of the United States guarantees to its citizens and people of this nation."

It should be noted that the form of the organization of the Alliance is democratic. It is a citizens alliance. It has its officers, president, secretary, etc., and it acts by resolution and order. Its minutes were before the trial court. It is composed of societies, with a few individual members. It does not have the form of organization like the Bund,—that of a membership of individuals with the leader principle.

Public officials of Milwaukee had refused to give permission for the German American Citizens Alliance to the use of a public hall on the ground that it was claimed to be associated, with or part of, the Bund. The Circuit Court of Milwaukee County granted mandamus and the Court held there was no connection between the two organizations.

The period of time between Knauer's declaration of intention, on December 4, 1929, and the granting of citizenship to him on April 13, 1937, was a great period of recovery in Germany and the fame of the German leader who personified the movement that built it, went round the world. It was an era of hero worship. The old leaders were gone. Each of the nations that had been at war had their new, strong men and it was a day when any foreign-born citizen or applicant for citizenship could look to any homeland in admiration of his race. It is no wonder that Knauer should look and admire,—and admire to the same extravagant extent the native born was then doing of its native son. That part of it is but human. It would be less than human not to do so. That this controlling trait of human nature is a matter of consideration in these cases is expressed by Mr. Justice Frankfurter in the *Baumgartner opinion* (322 U. S. 665, 674), in this language:

> "For such is the contradictoriness of the human mind that the expression of views which may collide with cherished American ideals does not necessarily prove want of devotion to the nation. * * * Forswearing past political allegiance without reservation, and full assumption of American citizenship are not at all inconsistent with cultural feelings imbedded in childhood and youth."

And the thought expressed in the quotation from Gaetano Salvernini, now perpetuated in our judicial literature on page 674 of that opinion, will bear repeating again and again:

> "Your pledges are only judicial and poljtical. You are asked to sever your connections with the government of your former country, not with the people and the civilization of your former country. And you are asked to give allegiance to the constitution of your adopted country, that is, to an ideal of life."

In this case Knauer is charged with perjury in his application and in his oath of fealty and the proof by which that serious charge is supposed to be susbtantiated is that Knauer displayed some pride in his homeland and attachment to his people,—maybe exaggerated, maybe inordinately so. But, as said, the oath of allegiance to the United States as a nation and its Constitution is a political tie which does not mean that the applicant effaces his past, for he cannot.

It would be hard to find any basis or justification for the filing of this suit were it not for the state of war at the time it was brought and the psychology that envelops us all when war strikes, emotions deepen, and hatreds of all types accentuate. And there is no basis for the decree of cancellation here, if the war thought is written out of it.

Judicial history shows, as is revealed by the multiplication of the decisions in Circuits, that the Government developed a policy of filing complaints to cancel the certificates of naturalized Germans who were showing activity in German American affairs in communities where that racial background was dominant. The suits answered certain strategic purposes, and threw the burden of proving loyalty on the defendants, at least giving a dangerous suit to defend. The end sought may have justified the means. Theoretically no, but in practice it changed the burden of proof.

In Milwaukee there is a large population of German ancestry. The American Almanac of 1946 shows (page 483) that in 1940 there were 88,808 foreign-born Germans in Wisconsin. Of the State's 3,137,587 population, Milwaukee County has 766,885 (p. 481). There were a number of existing German American Societies in the State and the German American Citizens Alliance was formed out

of those existing organizations. It was no fly-by-night organization and the deduction by the trial judge in his finding No. 37 that the German American Citizens Alliance was a "front organization for the Bund" is a pure assumption.

The outstanding characteristic of the Government's proof is that it proved nothing of consequence prior to the date of Knauer's naturalization, except an interest in the affairs of the German-born citizen. There was no war. Everybody was hating war and planning to keep out of it if it should threaten. But the entire case is built upon the thought that all that was being done by Knauer was a part of the war effort of Germany which did not break for us until nearly five years later.

There is assumption in this case that everything petitioner did was wrong and a part of Germany's war effort.

Almost the entire opinion of the Circuit Court of Appeals is taken up with a vigorous denunciation of the Bund, its purposes and its program; and the whole argument of the findings of the trial judge is taken up with the same thought.

Strike out what is said on that topic and there is no basis to either the findings of the trial judge or the opinion of the Circuit Court of Appeals. It is based on war when there was no war at the time in question.

The District Attorney could not prove, and did not prove, that petitioner was a Bund member. He called defendant as his witness for cross-examination and had him on the stand a day and a half (Knauer's record pages 156-384) in an effort to prove it and finally put the direct question to defendant whether he were a member of the Bund and the answer was, "Never".

Mr. Becker: Q. Were you a member of the Bund?

A. Never.

Q. Did you ever sign any petition or written document of any kind for membership in the Bund?

A. Never (Knauer's case, testimony page 365).

The trial judge had already held that membership in the Bund was not in itself sufficient to prove fraud which would warrant a judgment of cancellation of a naturalization decree (Conclusion to Mass Trial Evidence, Tr. 27).

It was also found that one of the purposes of the Bund was to keep America out of the war (Finding 15, Tr. 24) The war started September 3, 1939. Petitioner was admitted to citizenship April 13, 1937, two and a half years before war was declared.

Conclusion.

It is, therefore, respectfully suggested that the Decree of the District Court and the judgment of the Circuit Court of Appeals affirming it have operated to deprive petitioner of equal protection of the laws and the basic rights of naturalized citizens to the guaranteed freedoms upon faith of which they seek naturalization; and for the exercise of which petitioner here has been in effect expelled.

Wherefore, it is respectfully suggested that in the interests of justice, the judgments of the District Court and of the Circuit Court of Appeals be reversed.

All of which is respectfully submitted.

Ode L. Rankin,
Attorney for Petitioner.

APPENDIX.

This Appendix contains copies of five communications received in evidence for defendant for the purpose of showing his attitude and his activities as an officer of the German American Citizens' Alliance; also

The testimony of defendant on the matter of his beliefs, philosophy, and attitude toward the Constitution; and his speech in his defense.

I.

Testimony of Defendant As to His Mental Attitude Toward America and Its Constitution and Speech in His Defense.

914 Mr. Knauer: With the permission of the court, I would like to give a short outline of what my men-
915 tal attitude is towards American, towards the Constitution.

The Court: You should try to show, or you will be permitted to present, the evidence as to what your attitude was at the time you took your oath of allegiance. That is what we are going back to here, the time you became a citizen. All this other evidence is permitted to be received as bearing upon what your mental attitude was at that time. Courts have repeatedly held that the state of mind of a person can be shown by his subsequent conduct.

You are permitted now to testify under oath as to what your state of mind was at the time that you took the oath of allegiance to this country and renounced any allegiance to Germany.

Mr. Knauer: When I took the oath I believed in America and I still do. It was always my contention that citizenship implies duties as well as privi-

leges. I felt at the same time that it was time that we German Americans, if we expected to be treated as citizens and to be considered in community affairs, we must come forward as citizens and shoulder our part of the load. It is my opinion that citizens who count are only those who give time and effort to the support and growth of the community.

I also was inspired to write these letters and to be engaged in various activities because I believed in the Constitution and especially in some of its in-
916 terpretations which I shall outline as follows:

I refer especially to the interpretation of Abraham Lincoln's old friend, Justice David Davis, who wrote in that famous Mulligan opinion that the Constitution of the United States is a law for rulers and people equally in war and in peace and covers with a shield of its protection all classes of men at all times and under all circumstances.

I also believe if it were not permissible for Americans in the pre-war period to express their opinions and to organize for them, then the American people had lost the essentials of their liberty. I refer especially to an editorial in connection with this, quoting the Chicago Tribune of May 23, 1942.

I also believe that any citizen in this country has the right to criticize anything or any person, subject, of course, to the civil and criminal penalties for libel and slander, and he should have the right to discuss political questions and personalities as freely over the radio as he can in print or on the platform.

And I refer specifically to a Federal Court decision, *United States* v. *Rovin*, 12 F. 2d 942: "Among the principles of American citizenship is the right of every citizen to differ with these other citizens on whom has been imposed the responsibility of public office with respect to the policies to be followed in the administration of the affairs of the Republic, and this, of course, includes the right to make all lawful
917 efforts to arouse and direct toward the official representatives of the people the force of public opinion

in regard to such policies. This, surely, is the very essence of the principles of our Constitution, and in the application of such principles I see no reason for discrimination as between citizens and aliens."

And I refer to some opinions which have been given in respect to wartime. I refer to an opinion of the Justice Oliver Wendell Holmes of the United States Supreme Court, handing down the court's decision in the celebrated case of *Froberg* v. *United States*, Vol. 249 United States, who said:

"We do not lose our right to condemn other measures or men because the country is at war." In a recent public statement Attorney General Biddle declared distinctly that it was not the policy of the United States Government in the present conflict to prosecute spokesmen of publishers who took the administration to task for its policies or blunders.

Also, the Congressman, Representative Joseph Martin, a Republican of Massachusetts, read into the record the words of Woodrow Wilson at the outset of the First World War, in which Wilson stated:

"We do not need less criticism in time of war but more. It is hoped that criticism will be constructive, but better unfair attack than autocratic oppression."

I also would like in the following facts in respect to my activities—I relied on the fact that a charter was issued to the German American Citizens Alliance by the Secretary of State at Madison, approving the Articles of Incorporation of the Citizens Alliance in their entirety, including the provision in respect to the case of dissolution.

I relied also on the fact that the relief fund created under the name of Kyffhaeuser Aid, found approval for collection and distribution of money by the issuance of a permit on the part of the State department at Washington.

I also relied on the fact that after a lengthy investigation on the part of the Justice Department, a report of about a thousand pages had been issued in respect to the Bund activities and no action was taken against the Bund or any of its members.

And I would say that undoubtedly the problem of the connection of the defendant with the Kyffhaeuser Aid was thoroughly explored and considered by the Federal Grand Jury at Philadelphia to which I had been called a year ago, as well as by officers of the Department of Justice charged with the responsibility of investigating this case, and as a result of the consideration and investigation neither an indictment nor a presentment has been made by the Federal Grand Jury.

And, on the other hand, the fact never has been brought out that in the year 1930 I had my mother come to this country, she was 60 years old at that time, and that I made an honest effort and honest attempt to keep my mother here for the rest of her life.

The fact was never brought out that I never bought Rueck Wanderer marks. I refer to the special type of marks which could be bought by people who intended to go back to Germany at a special rate.

And the fact was never brought out that when I went to Germany in 1934 that I never gave up my home, I never gave up my furniture, and I kept my car in the garage. I think that shows very amply, you know, that I had the intention to come back to the United States and stay here.

And, then, the fact always was emphasized that I went to Germany and that I stayed there, but never the fact that I came back to the United States.

Now, I wish to state what I understand by Americanism. I always thought that Americanism was love of the American people, my American home, my American family, and that part of America called United States. I understood that America has its own traditions, law and culture, and is a land composed of many creeds and races.

I believed in our American Constitution and its truthful interpretation. I was inspired by the words of Woodrow Wilson in an address to new American citizens. He said: "You have just taken an oath of allegiance to the United States of America, of allegiance to whom? Of allegiance to no one unless it be

God. Certainly not of allegiance to those who temporarily represent this great Government. You have taken oath of allegiance to a great idea, to a great body of principles, to a great hope of the human race, and while you bring all countries with you, you come with a purpose of leaving all other countries behind you, bringing what is best of their spirit, but not looking over your shoulder and seeking to perpetuate what you intended to leave behind in them.

"I certainly would not be one even to suggest that a man cease to love the home of his birth and the nation of his origin. These things are very sacred and ought not to be put out of your heart, but it is one thing to love the place where you were born and it is another thing to dedicate yourself to the place to which you go."

I believed when President Woodrow Wilson said in an address of November 11, 1923, that there is at least one great and powerful nation which can turn away from programs of self interest and devote itself to practicing and establishing the highest ideas of disinterested service and the consistent maintenance of exalted standards of conscience and of right, and for that reason I tried to relieve the suffering of the German people, not only lately but way back to the year 1927 already. I refer especially to my efforts to collect money for the Hindenburg Fund, the German Winter Relief and the Kyffhaeuser Aid.

I believed in the words of Henry Cabot Lodge when he wrote that every man should love and honor the land of his birth and the race from which he springs and keep his memory green. It is a pious and honorable duty.

I believed in the idea of Secretary of Interior Ickes who, speaking before the Council of American Soviet Friendship on November 8, 1843, at Madison Square Gardens, made the following statement:

"For my part I have always believed that any political entity is entitled to that form of government which the majority of its people desire."

I believed in George Washington's words that "America should stay out of war entanglements."

I shared the admiration and respect for Adolf Hitler, and I wish to state that I still do, in the same way as Winston Churchill did when in 1938 he made the statement as follows:

"I have always said that if Great Britain were defeated in war I hoped we should find a Hitler to lead us back to our rightful position among the nations."

I believed what Senator F. Ryan Duffy (now the presiding Judge) said in his speech in June, 1938, at the Washington Park:

"All Americans, no matter what their racial antecedents may be, should be thankful because of the prominence of Germans as a formative element of our people in this great melting pot of various nationalities of Europe. We can be thankful for the fine strains of German nationality which have gone into our makeup".

But in spite of my best intentions, in spite of my repeated assurances that I swore with a clear conscience and without any mental reservation or purpose of evasion whatsoever to support and defend my newly adopted country and to uphold and support and defend its Constitution and its laws, I have been accused of mental reservation and fraud.

In spite of my assurance that in accordance to my oath, in all my actions, in all my thoughts, words and deeds, the dominant motive was the welfare of the American people, and that I positively and definitely intended to bear allegiance and faith to the people, Constitution and laws of the United States, I have been accused of being not attached to the people, the Constitution and the laws of the land.

Yes, I have been informed that I was wrong to think first of America and that my philosophy was archaic, and my ideology was tantamount to Fascism and Nazism.

Your Honor, this reminds me of two cases where the intentions of two outstanding men whose allegiance should never be doubted at all has been wilfully misconstrued. One is the case of Herbert Hoover, whose Americanism certainly cannot be questioned, but who has been charged not so long ago by the Communistic Daily Worker that he, in one of his speeches, had officially opened Hitler's peace offensive. The other case is that of John Cudahy who was quoted in the press as having said, "German soldiers in Belgium acted better than American soldiers would have in like circumstances." It also was stated that "by implication he made it appear that Britain was responsible for the famine in Belgium."

In answer to these statements, the Secretary of Interior Harold L. Ickes called John Cudahy one of the other "simple-minded folk." He also called him "a megaphone through which Hitler is graciously permitted to shout into the ears of Americans; some of them ars naive and simple minded as Cudahy himself."

He also stated, "It may be that he (Cudahy) is merely an unconscious and unwilling mouthpiece of the Fascist gang." He further says, "Our Simple Simon was hypnotized."

But, in spite of these by no means flattering remarks, which meant nothing else but that Cudahy was "playing Hitler's game,"—I quote from the Milwaukee Journal,—that he was used as a simple-minded channel of propaganda.

Your Honor who is presiding in this Court today did not hesitate to attend, not only his funeral when Cudahy suddenly died under peculiar circumstances, but your Honor also acted as pallbearer to pay an old, dear friend the last respects. Your Honor knew that Cudahy meant well, had the best intentions, but his ideas were misconstrued, even by the husband of his own niece. You not only acted as pallbearer because your Honor knew his integrity, sincerity and

honesty, you did so in spite of nasty remarks of others. I was in a similar situation. I also acted as pallbearer for a man who died suddenly under peculiar circumstances, a man who also meant well for the American people and whose intentions were likewise honest and sincere but misunderstood.

Nothing else than having done the act of being pallbearer for George Froboese, is an implication in my trial. The rest of the claims are so ridiculous that I wouldn't take the trouble of calling witnesses in my behalf. Thousands of citizens of Milwaukee have become friends of mine, but I treasure their friendship too high as to call them as witnesses. I know they would have to pay dearly for the good services they would be only too willing to render to me as a friend, but they would be terrorized, they would lose their jobs; but the people whom I know will be in a position to judge as to my qualification as a citizen of this country, *Vox Populi! Vox Dei!*

I thank you, your Honor.

II.

Letter to Milwaukee Press.

864 Mr. Knauer: Now, the letter was, as I said, directed to the Milwaukee press, and reads as follows:

"The vilest, filthiest and most vicious telephone campaign aimed at me, but directed against my wife and children, and going on for over two years, is getting to become a major scandal. The criminal who is apparently used as a tool by others, as he is without work and has no means of self-support, is known
865 to the authorities and has a record of 26 arrests for various crimes, including Navy desertion, dope peddling, robbery, burglary, and extortion. Within the last two years he has made threats continuously, over 70 times during the first three months in 1942, but since April 3, 1942 to date he threatened my family 35 times over the telephone or by letter or in person, thus keeping my wife and children constantly in terror, causing them discomfort and nervousness.

"In the past I have used every legal means to protect my family against the criminal, and have received the finest cooperation on the part of the Milwaukee Police Department, but for some reason or another the criminal has been immediately released or put on one probation after another. For this reason, I see no other alternative but to use the democratic procedure of taking the press into my confidence and to rely on its willingness to discharge its duties to the public and the Government. I take this step, as my case is not the only one, and as I believe that a continuation of threats by letters or telephone without proper interference on the part of our law enforcing agencies will gradually cause a state of panic and will be detrimental to our community.

"I realize, further, that we are living in emotional times, and that we Americans of German descent are exposed to suffering and humiliation, and that possibly the step I am taking will be misconstrued and may lead to civil conspiracy to cause my arrest on
866 the abuse of process and to a malicious prosecution of my person. However, as an American I feel resentful to anyone threatening my wife and children, whether the threats come from a legal or self-asserted saviors of our country, or whether they come from the suave, slick characters who hide behind the criminal in question. We Americans of German descent are not making any threats, we are not organizing jobs or picket lines, we have not gone on strike. We recognize that the country is at war and that we have to be prepared to make whatever sacrifice may be asked of us, but we are supposed to explain what looks to us as a prime example of a plot of terrorizing and provocation.

"We Americans of German descent are expected to die for this country, but to be forced, for tedious, indefinite years, to live and endure slurs and humiliation from criminals within our country demands not only courage but a fortitude greater even than that of Socrates."

Signed by the defendant Paul Knauer.

III.

Wire Sent to Attorney General Concerning Treatment of German American Citizens.

867 Mr. Knauer: Then I also want to call the attention of the court to a wire which I sent to the Honorable Francis Biddle, Attorney-General in Washington, under the date of July 4, 1942, in connection with the articles which appeared in the Milwaukee Journal over the first half of the year 1942, and the wire reads as follows:

"I respectfully request an immediate Federal Grand Jury investigation of statements and innuendoes of the latest issues of the Milwaukee Journal in its filthy and slimy smear campaign against Americans of German descent, creating in the city an atmosphere of malicious hostility and leading to suspicion, ostracism, boycotts, threats by letter or telephone, discharge of loyal workers, and thus producing a state of panic and laying the ember for serious domestic conflict. Attention should be especially directed to an editorial advocating utter disregard of the Constitution in dealing with the German-American element, thus inviting mob violence. In the meantime please direct your Milwaukee office to immediately take proper steps in correcting this situation and preventing any further martyrdom, hatred and characterization of the German-American element in this community. I still consider the Attorney-General powerful enough to protect the rights of work and reputation of American citizens, and believe he will live up to his promises recently given."

IV.

Letter Sent to Justice Department Giving Requested Details.

868 Mr. Knauer: And I—at the request of the Justice Department, I sent a letter giving details, and I added a summary refering to the whole situation, and the summary reads as follows:

"Of these newspaper articles, which cover only a part of the slimy campaign during February to June, 1942, the items 3, 12 and 13 are the most prominent examples. They represent the products of writers who are either financially interested in castigating whatever is of German descent, or blinded by war hysteria, and as a whole in most cases are couched in general, unspecific terms, and purely constitute an attempt of defamation, detraction, villification, calumny and aspersion upon the whole German-American element in this community. The language of the writers can only be judged by its effect.

"In spite of the fact that this community is part of the Middle West, where people are most firmly determined to win the war, giving to the fullest of their ability without shouting, the Milwaukee Journal, instead of concentrating its efforts and devoting its columns to the creation of unity and appeal to patriotism, puts in every effort to set itself up over and
869 above our duly elected law enforcing agencies as a tribunal of its own to blacken and defame, either by malicious slander and false accusations or by wicked insinuations.

"The German-American element has always been peaceful. It does not make threats. It is not organizing mobs or picket lines, and has not gone on strike. It is a law-abiding, taxpaying group whose motive in all their actions, in all their thoughts, words and deeds, is the welfare of this nation. It never pleads for any racial or personal advantage. It only demands that our law enforcing agencies discharge their duties properly, abolish these un-American newspaper tribunals once and for all, prevent a disruption of our community and repair the unbelievable damage caused by this smear campaign. There is no doubt that a determined, challenging, well-planned smear propaganda program will be highly detrimental to our community and will become a menace to the general war effort."

V.

Letter to Whom It May Concern for Use By Discharged Members of the Alliance.

879 Mr. Knauer: I also would like to introduce in evidence a letter which had been mailed to the—beg your pardon—a letter which had been given to members of the German-American Citizens Alliance because they lost their job in consequence of a newspaper article which appeared in the Milwaukee Journal, and the letter reads as follows, dated February 24, 1942:

"To Whom It May Concern: In the face of the fact that the Milwaukee Journal has refused to print a statement released by us on February 21st in response to a front-page article of February 17th in which our organization has been called a pro-Nazi group, we wish to state as follows:

"1. Our organization is a peaceful, law-abiding, taxpaying group of Americans of German descent, whose dominant motive in all their actions, in all their thoughts, words and deeds is the welfare of this nation. We do not plead for any personal or racial advantage; we only demand our rightful place that history accords us and our ancestors.

"2. Our Constitution reads as follows: 'The undersigned have associated and do hereby associate themselves together for the purpose of forming a corporation under Chapter 180 of the Wisconsin Statutes, the business and purpose of which corporation shall be (a) to unite into a union and federation all societies in Wisconsin whose members are of German origin; (b) to maintain and support the Constitution of the United States in its integrity; (c) to preserve all rights unabridged which the Constitution of the
880 United States guarantees to its citizens and people of this nation.'

"3. A decision of the Circuit Court of Milwaukee of October, 1938, in the case of Paul Knauer v. Auditorium Board, reads as follows: 'Statements that the German-American Citizens Alliance, Inc., is affiliated

with the so-called Volksbund has no foundation in fact. The uncontradicted evidence upon this hearing refutes such assertions. The positive testimony discloses that the so-called Volksbund is not a member of the Alliance or in any wise affiliated with it. The applicant, the German-American Citizens Alliance, Inc., is a Wisconsin corporation duly organized under the laws of this State for legal and legitimate purposes.'

"4. We wish to emphasize that our charter is still intact and has not been revoked, because we always conducted our affairs within the scope of our Constitution.

"5. The F. B. I. has received our records on January 5th, 1942, but up to date no action has been started against our organization or any of its officers.

"6. Neither Romi Blasewitz nor Gene Freischmidt have ever been and are not now officers of our organization.

"7. This statement is made with the express assurance that the undersigned is willing to testify under oath at any time in any court in Milwaukee to its truth.

"German-American Citizens Alliance," signed Paul Knauer, Vice-President.

VI.

Petition to Senate and House of Representatives.

881 Mr. Knauer: Under February 8, 1945, I also petitioned the House and the Senate to start an investigation into German-American persecution, and I would like to introduce in evidence one of the mimeographed letters which I sent out to various members of the Senate and House.

The Court: By Senate and House, I suppose you mean of the national Congress.

Mr. Knauer: That is correct, at Washington. And the circular letter reads as follows:

"To the Honorable Members of the United States Senate and the House of Representatives, Washing-

ton, D. C., Gentlemen: Claims have been made that our constitutional liberties are intact in spite of war, but justice demands to state that this view is incorrect in respect to the German-American minority within this country. In spite of the fact that the German-American population is an unorganized, law-abiding, tax-paying, and peaceful minority within our great Republic, in spite of the fact that it is never fomenting strikes and disorders and is doing its best in respect to the war effort, it has to be stated with deep regret that a very zealous, suppres-
882 sive and hostile approach against this minority has been made by various branches of our present administration, and this minority has been subjected to a course of treatment almost tantamount to persecution, thus stamping it officially as a separate political unit, set aside to exceptional legal treatment, with the final intent to ruin every influential German-American economically if legal means are not applicable.

"The measures taken against the German-American minority in this community are outstanding examples and have created a situation which I believe deserve nation-wide attention. If no immediate correction is made, they might easily be more damaging to our American cause than anything they are trying to curb. For this reason, and as there seems to be no other means available to correct a nearly intolerable situation which never has received the attention of Congress, it deserves this petition for redress of grievances enumerated below, is herewith respectfully submitted.

"I also respectfully ask for a full hearing before Congressional committee or several committees, preferably in Milwaukee, so that each member could receive firsthand knowledge and information from various local witnesses and study and determine the legislation which is needed, if any, to protect like nationalities in like situations from like treatments. Pending this investigation, the United States District Attorney should be directed to withhold or sus-

pend all legal proceedings directed against German-
883 Americans if they are for the purpose of denaturalization without criminal basis.

"In the following paragraphs it will be shown that the situation is so serious that immediate action on the part of Congress appears imperative. In the first place, the investigation should be directed against the conduct of the F.B.I. in Milwaukee, which is trying to establish a terroristic strangle-hold on all German-Americans who immigrated after the first war and are courageous enough to refer to their constitutional rights if subjected to a personal investigation. If somebody only offers the slightest objection to personal question or search of his home, the F.B.I threatens him with publicity or loss of job, then goes on to smash his career or family life and to send him or his wife to jail, whatever may be done by hook or crook, because he had dared to remind them of certain fundamental rights.

"Special attention should be paid to the so-called 'admissions' or 'voluntarily' signed statements which seemed to be in vogue, and to which an unbelievable number of German-Americans have been subjected without being informed that their statements would be used against them. Such 'voluntarily' signed declarations should be disregarded and should not be admissible in any court procedure, because the signers have been denied a copy and thus have been prevented from consulting an attorney as to their rights.

"Furthermore, attention should be directed to the fact that hundreds of Germans who applied for citi-
884 zenship, paid their fees, and passed their examinations will not receive their papers for the duration, making them stateless and thus creating a special legal problem. Reference is not made to the few who were granted citizenship, apparently for 'exhibition' purposes.

"Investigation should furthermore disclose why skilled German-Americans without explanation lose their jobs, licenses, and work contracts, why bank ac-

counts of German-American citizens are frozen without due process of law, why loans are denied, why loyal German-Americans are denied a seat in the Advisory Council of the City Government, why the office of the United States District Attorney does not protect German-Americans from detrimental publicity on the part of local newspapers, why the Federal Court and District Courts in Milwaukee lavishly grant one probation after the other to people who threaten German-Americans by telephone or letter. It furthermore should be investigated why German aliens who are willing to fight for his country are denied citizenship and why German-American parents who have fighting sons are interned. At the same time, newspapers should be investigated as to their poisonous propaganda against anything German-American. In this respect a separate complaint had been filed with the Justice Department on July 4, 1942, with detailed information in a subsequent letter. This information should be made accessible to the investigating body. It also should be investigated why the newspapers are exposing names of German-
885 American citizens against whom denaturalization proceedings are considered a long time before the proper legal papers have been served on them.

"It cannot be denied that a German-American problem has arisen, created not by the German-American minority but by acts of the present administration. Such a problem has never existed before. I regret to state that our Federal Government has apparently yielded to special pressures and resorted to proceedings which raise serious questions as to their necessity in the conduct of war. If these measures against the German-American minority are not persecution, they are witch hunting, and have created an atmosphere of malicious hostility, have led to ostracism, suspicion, boycott, loss of work, and have caused a general tension, nervousness and restlessness in this community. Rumors have it that these suppressive measures are only the beginning and are taken either for the purpose of provocation

or revenge. In the interest of unity and harmony in our United States I appeal to you for immediate action to remedy this situation.

"Respectfully yours," signed by Paul Knauer.

VII.

Press Articles Concerning Investigation of Bund By F. B. I.

897 Mr. Knauer: Now I would like to submit in evidence an article which appeared in the Deutscher Weckruf, dated January 20, 1938, and which is headed: "What now, Mr. Dickstein?"

Now, it says: "'Not Guilty,' says the Department of Justice. Its agents find no justification for malicious charges against the German American Bund. Decision rendered after almost a year's strenuous investigation of attacks on the German element."

898 "On January 13th the New York Times printed an Associated Press dispatch from Washington of exactly four inches, only four and a half lines of which contained the statement of an official that 'Justice Department agents found no violation of Federal Laws' in their investigation of the Amerikadeutscher Volksbund.' The rest of the four inches merely rehearsed antecedent history sufficiently familiar to everyone.

"The afternoon papers of the same date carried an Associated Press dispatch which reads as follows: 'Informed persons predicted today that the thousand-page report which Federal agents compiled after investigating the Amerikadeutscher Volksbund would not lead to criminal prosecution of the league's members.' They said the agents found no evidence of Federal law violation by the organization which is modeled along lines of Nazi groups in Germany.

"The Federal Bureau of Investigation undertook this study after some members of Congress sug-
899 gested that the Bund might be flouting such laws as those against sedition and the interstate shipment of firearms."